IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9663 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SATISHBHAI DHANJIBHAI SAVALIYA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 9663 of 2001

MS BANNA S DUTTA for Petitioner No. 1

MRS HANSABEN PUNANI, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 04/12/2001

ORAL JUDGEMENT

By means of filing this petition, petitioner has challenged the order of detention dated 23-4-2001 passed by the Police Commissioner, Surat City.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, actual date of detention and order of detention was same i.e. 23-4-2001. It is submitted that the detaining authority has relied upon six cases registered under Sec.379 of Indian Penal Code. It is further submitted that statements of two witnesses were recorded on 5th of April and 8th of April and same have been verified on 20-4-2001 by the detaining authority. It is submitted by the learned advocate for the petitioner that by a representation through advocate statements of witnesses recorded under Sec.161 of Cr.P.C.,which are vital, have been demanded, but the same have not been provided to the detenu either by the State or by the detaining authority for making an effective representation. Learned APP for the State, has fairly admitted the same.

4. It is the duty of the authority to supply copies of the documents which were requested by the detenu. Here in this case, it appears that the copies of statement of witnesses recorded under Sec.161, Cr.P.C. were not supplied to the detenu though demanded and no affidavit has been filed either by the detaining authority or the State stating the reasons of not providing those documents. It has been held by a Division Bench of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. 2000(1) G.L.H. 393 as under:

"Before parting with the matter, we may observe

> that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

Since no affidavit has been filed either by the detaining authority or the State explaining satisfactorily the reasons of not supplying the documents demanded and justifying the action taken by the detaining authority, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. The petition is allowed. The impugned order of detention dated 23-4-2001 passed against the detenu is hereby quashed and set aside. The detenu Satishbhai Dhanjibhai Savaliya is hereby ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

RADHAN/